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BY THE U.S. GENERAL ACCOUNTING OFFICE

**Report To The Honorable Max Baucus  
United States Senate**

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**Bureau Of Indian Affairs' Participation  
In A Proposed Hydroelectric Facility  
At Kootenai Falls, Montana**

In 1980 the Bureau of Indian Affairs (BIA) agreed with a group of seven electric cooperatives that it would pay up to a 10.5-percent share of the costs to determine the feasibility of, and obtain a construction and operation license for, a proposed hydroelectric generating facility at Kootenai Falls, Montana

This report discusses how the BIA improperly spent Flathead Indian Reservation Irrigation and Power Project revenues and did not report to congressional appropriations committees its reprogramming of irrigation and power system construction funds to pay a portion of its share of Kootenai Falls participation expenses. Also, the Flathead project's financial system was not in compliance with two of the Comptroller General's internal control standards

The Department of the Interior has initiated or plans actions to correct the problems identified in this report



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GAO/RCED-84-126  
JULY 11, 1984



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

RESOURCES COMMUNITY  
AND ECONOMIC DEVELOPMENT  
DIVISION

B-212240

The Honorable Max Baucus  
United States Senate

Dear Senator Baucus:

As requested in your May 17, 1983, letter and subsequent agreements with your office, this report discusses the Bureau of Indian Affairs' participation in the proposed hydroelectric facility at Kootenai Falls, Montana.

We are sending copies of the report to the Director, Office of Management and Budget; the Secretary of the Interior; and other interested parties. Copies will be available to others upon request.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "J. Dexter Peach".

J. Dexter Peach  
Director

D I G E S T

On April 14, 1980, the Department of the Interior's Bureau of Indian Affairs (BIA) agreed with a group of seven electric cooperatives that it would pay up to a 10.5-percent share of the costs to determine the feasibility of, and obtain a license for, constructing and operating a \$225 million hydroelectric generating facility at Kootenai Falls, Montana. According to the project engineer in charge of BIA's Kootenai Falls activities, BIA is participating with the seven developers in the Kootenai Falls venture to assure a future source of electricity for the Flathead Indian Reservation in Montana. Under the participation agreement, the reservation would receive up to a 10.5-percent share of electricity generated if the facility is constructed.

The developers applied to the Federal Energy Regulatory Commission in November 1978 for a construction and operation license. As of June 14, 1984, the Commission had not made a decision on the application.

BIA's Flathead Indian Reservation Irrigation and Power Project, which supplies water for irrigated farming and electricity for the reservation, is responsible for administering the Kootenai Falls participation agreement with the seven developers. As of October 1983, BIA had spent about \$493,000 on feasibility study and license application costs for the proposed Kootenai Falls facility. This amount includes \$85,000 from fiscal year 1979 appropriations, \$265,000 of other irrigation and construction funds reprogrammed from October 1979 to November 1981, and \$143,000 from Flathead power system revenues. (See pp. 1 to 3.)

Senator Max Baucus asked GAO to review BIA's participation in the venture to determine whether federal funds were properly spent. (See p. 3.)

GAO found that the reprogramming of funds had not been reported to the congressional appropriations committees as directed by BIA and the committees, the use of power system revenues to pay a portion of the feasibility study and license application costs was inappropriate, the Flathead project's financial system was not in compliance with two of the Comptroller General's internal control standards, and BIA's continued participation in the Kootenai Falls venture is uncertain. These matters are discussed below.

#### REPROGRAMMED FUNDS NOT REPORTED

To pay part of its 10.5-percent share of feasibility study and license application costs, BIA reprogrammed \$265,000 of appropriated funds it normally used for the construction, extension, and rehabilitation of Indian irrigation projects and related power systems. The reprogrammings occurred between October 1979 and November 1981.

Reprogrammings of funds are permissible; however, both House and Senate and BIA budget directives require that BIA's reprogrammings be reported to the congressional appropriations committees. BIA, however, did not report to the committees its reprogrammings for the Kootenai Falls venture. BIA's headquarters budget officer said that the Flathead transfers of appropriated irrigation and power construction funds for the payment of Kootenai Falls facility expenses may not have been recognized as reprogramming actions by the budget office staff that processed the 1979, 1980, and 1981 authorizations and were, therefore, not reported to the congressional appropriations committees. (See pp. 6 to 8.)

#### Recommendation

GAO recommends that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to report to the congressional appropriations committees all BIA reprogramming actions related to the Kootenai Falls venture. (See p. 12.)

#### INAPPROPRIATE USE OF POWER SYSTEM REVENUES

From September 1982 through October 1983, BIA spent \$143,000 of Flathead power system

revenues to pay its proportional share of the Kootenai Falls feasibility study and license application costs.

BIA collects funds from the users of its power projects and uses these revenues as they are needed to meet project operation and maintenance costs. The use of the revenues collected by a BIA power system is restricted by 25 U.S.C. 385c (60 Stat. 895) to specific activities such as operating and maintaining the power system, amortizing construction costs, and paying expenses and obligations chargeable to power revenues. The act of May 25, 1948 (62 Stat. 269, 273), as amended, also provides specific further uses of Flathead power revenues such as making improvements and extensions to the power system. It is questionable whether any of the permissible activities is broad enough to encompass expenditures for feasibility study and license application costs for the proposed Kootenai Falls facility.

The use of Flathead power system revenues, after BIA had already elected to spend funds from its annual irrigation and power construction appropriation, also was contrary to a longstanding rule of appropriations law that prohibits an agency from switching from one appropriation to another to pay project expenses. BIA should reimburse the Flathead project power revenues from an available appropriation account or seek a deficiency appropriation from the Congress for that purpose. (See Comp. Gen. B-95136, Aug. 8, 1979).

BIA's Flathead project engineer said that he was aware that the use of power system revenues to pay for Kootenai Falls expenses was questionable. He said that he used the revenues to assure adequate future electrical power for the Flathead Indian Reservation and that other sources of funds had been spent. (See pp. 8 to 11.)

#### Recommendation

GAO recommends that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to (1) terminate the use of Flathead irrigation and power system revenues for the proposed Kootenai Falls facility and

(2) reimburse the Flathead project power revenues from an available appropriation account or seek a deficiency appropriation from the Congress for that purpose. (See p. 12.)

#### INTERNAL CONTROLS NOT ADEQUATE

The Comptroller General's internal control standards define the minimum level of quality acceptable for internal control systems and constitute the criteria against which systems are to be evaluated. GAO determined that on the basis of financial management problems identified by Interior's Inspector General, the Flathead project's financial management system was not in conformance with the Comptroller General's internal control standards that require (1) personnel with adequate experience and training and (2) separation of duties. (See p. 14.)

#### Personnel experience and training

In 1983, the Inspector General found among several financial and accounting problems that BIA's Flathead financial staff, which is also accountable for BIA's Kootenai Falls participation funding, was not sufficiently trained or experienced in the overall financial management of a project as complex as the Flathead project. Therefore, according to the Inspector General, the staff could not be expected to prepare adequate financial statements. The Inspector General said that Flathead's balance sheets were only partially completed, there was no monthly presentation of revenues or profits and losses, and there was no comparison of actual expenditures with budgeted figures.

In response to an Inspector General recommendation, BIA agreed in January 1984 that the Flathead project's finance office operations would be reviewed. In commenting on a draft of GAO's report in April 1984, Interior agreed that additional actions were needed to bring the project's financial management system into conformance with the internal control standard on adequately experienced and trained personnel. These actions, according to Interior, include establishing and filling a supervisory accounting position, evaluating and perhaps upgrading existing accounting positions, and training staff. (See pp. 14 to 16.)

#### Separation of duties

To reduce the risk of error, waste, or wrongful acts or to reduce the risk of their going

undetected, the Comptroller General's separation-of-duties standard requires that no one individual control all key aspects of a transaction.

Starting in 1976, when the project's administrative officer position became vacant, successive Flathead project engineers assumed and carried out that position's duties, as well as their own. The administrative officer at Flathead is responsible for reviewing, approving, and certifying all financial transactions. Flathead's project engineer is responsible for authorizing project expenditures.

In mid-1983, GAO and Interior's Inspector General informed the Flathead project engineer that his double duties and responsibilities did not comply with the Comptroller General's separation-of-duties standard. As a result, the Flathead project engineer asked BIA to assign an administrative officer to the project staff. BIA did so in November 1983. (See pp. 15 and 16.)

#### Recommendation

GAO recommends that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to ensure that the financial management system at the Flathead Indian Reservation Irrigation and Power Project complies with the Comptroller General's internal control standard requiring adequately trained and experienced personnel. (See p. 16.)

#### CONTINUED BIA PARTICIPATION IS UNCERTAIN

As a result of financial management problems and tribal opposition to both the construction of the proposed facility at Kootenai Falls and BIA's participation in the venture, BIA has suspended its participation payments and has requested that Interior's Solicitor determine the appropriateness of its participation in the Kootenai Falls venture. Because of several unresolved issues concerning the need for the facility and the effect on the tribe and on wildlife, fishery, archeological, and cultural resources, the Federal Energy Regulatory Commission staff also recommended to the Commission's administrative law judge hearing the case that the federal license for construction and operation of the proposed facility be denied.

The administrative law judge recommended to the Commission on April 23, 1984, that the license be denied. According to a Commission staff attorney familiar with the license approval process and the Kootenai Falls case, the applicants will appeal the judge's ruling to the full Commission. The staff attorney said that the Commission's decision may not come for at least a year and that the Kootenai Falls application could be tied up in litigation for 2 years or more before a final decision is reached. (See pp. 11 and 12.)

#### Recommendation

GAO recommends that if Interior's Solicitor determines that it is in the government's and the Flathead Indian Reservation's best interest for BIA to continue its participation in the Kootenai Falls venture, the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to develop and present to the Congress funding proposals for continuing such participation. (See p. 13.)

#### AGENCY COMMENTS AND GAO EVALUATION

The Department of the Interior said that it has focused its attention on the various deficiencies regarding BIA's Kootenai Falls hydroelectric facility participation. The Department agreed with GAO's recommendations and pledged corrective actions, some of which have already been initiated. Also, BIA agreed to reimburse the funds improperly spent from Flathead project power revenues. (See apps. I and II and pp. 13 and 16.)

The Department's follow-through on its planned actions should ensure that BIA's Kootenai Falls participation problems will be corrected.

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ABBREVIATIONS

BIA	Bureau of Indian Affairs
FERC	Federal Energy Regulatory Commission
GAO	General Accounting Office

## CHAPTER 1

### INTRODUCTION

The Department of the Interior's Bureau of Indian Affairs (BIA) provides, among other things, for the construction, extension, operation, maintenance, and rehabilitation of irrigation projects and related hydroelectric power generating systems on Indian reservations in compliance with the Snyder Act of 1921 (25 U.S.C. 13). Senator Max Baucus requested that we review the appropriateness of BIA's funding of feasibility study and license application costs for a hydroelectric power generating facility proposed to be built at Kootenai Falls, Montana, by a group of seven electric cooperatives.<sup>1</sup>

BIA's Flathead Indian Reservation Irrigation and Power Project supplies water for irrigated farming and electricity for the 20,000 residents of Flathead Indian Reservation located in northwestern Montana. The residents include both Indians and non-Indians.<sup>2</sup> The project generates, transmits, and distributes electrical power to about 13,000 reservation customers, of which about 2,600, or 20 percent, are Indians. The project, which has a small generating facility containing two 160,000 watt units located on the reservation, also purchases electrical power from the Montana Power Company and the Bonneville Power Administration.

According to the Flathead project engineer, who is the BIA official in charge of the Flathead Indian Reservation Irrigation and Power Project, the threat of national electrical shortages and increasing utility rates during the 1970's required BIA to seek alternative power sources. Therefore, in April 1980, BIA entered into a venture to study the feasibility of, and obtain a license for, constructing and operating an electrical generating facility at Kootenai Falls, Montana, along with the group of seven electric cooperatives known as the Western Montana Energy Developers. The Flathead project engineer was responsible for administering BIA's Kootenai Falls participation in the venture under the April 1980 agreement with the seven developers.

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<sup>1</sup>The cooperatives include Flathead Electric Cooperative, Inc., Kalispell, Montana; Glacier Electric Cooperative, Inc., Cut Bank, Montana; Lincoln Electric Cooperative, Inc., Eureka, Montana; Missoula Electric Cooperative, Inc., Missoula, Montana; Ravalli County Electric Cooperative, Inc., Corvallis, Montana; Vigilante Electric Cooperative, Inc., Dillon, Montana; and Northern Lights, Inc., Sandpoint, Idaho.

<sup>2</sup>The United States has granted various governmental rights to Indian tribes. Indian tribes, through treaties with the United States, have been granted general powers to make laws governing the conduct and admittance of non-Indians on reservation land.

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In 1978, the developers had secured the rights from the state of Montana and the Federal Energy Regulatory Commission (FERC) to investigate the feasibility of constructing a 144 million watt hydroelectric power generating facility on the Kootenai River near Libby, Montana, at the location of Kootenai Falls about 70 miles from the reservation. According to the FERC staff's August 1983 initial brief, the hydroelectric facility, if constructed, would consist of (1) a 925-foot long, 30-foot high concrete gravity-type dam with submerged gates along its entire length, (2) four power generating units in the underground powerhouse, and (3) a 3.5-mile long reservoir with a surface area of about 150 acres.

#### PARTICIPATION AGREEMENT

Discussions initiated in 1977 between BIA and the developers resulted in the signing on April 14, 1980, of a Memorandum of Understanding by BIA's Billings (Montana) Area Office director. The Billings Area Office was at that time responsible for the administrative oversight of the Flathead Indian Reservation Irrigation and Power Project. As a result of BIA organizational changes, the administrative oversight of the project was transferred from the Billings Area Office to BIA's Portland (Oregon) Area Office in January 1983.

Under the April 1980 memorandum, BIA agreed to pay up to 10.5 percent of the developers' costs of preliminary studies to determine if further development of the facility was feasible and of other studies or actions necessary to obtain state and federal government licenses for constructing and operating the facility. In exchange, BIA's Flathead project would be entitled to participate in the actual construction, ownership, operation, and electrical output of the facility at the same share it contributed toward the feasibility study and license application costs. If the Flathead project does not continue its participation in the venture for any reason, it would relinquish its proportionate share in the facility.

#### PROPOSED PROJECT COSTS AND BIA PAYMENTS

In April 1978, the Billings Area Office director estimated that BIA's cost to participate in the Kootenai Falls feasibility study and license application process would total about \$163,000. However, primarily as the result of economic inflation and continuing license application legal costs, BIA had paid the developers \$493,000 through October 1983, or about \$330,000 more than the original estimate of \$163,000. Funds came from three sources: (1) \$85,000 in fiscal year 1979 appropriations, (2) \$265,000 reprogrammed from other BIA irrigation and related power construction funds, and (3) about \$143,000 from Flathead Indian Reservation Irrigation and Power Project revenues.

BIA's share of construction costs for the Kootenai Falls facility was initially estimated by BIA's Flathead project engineer to be \$7.5 million in 1977. According to information from

Interior's Office of Inspector General, the Flathead project's 10.5-percent share of estimated construction costs had by March 1983 risen to \$24 million, or an additional \$16.5 million. The total Kootenai Falls costs for all participants was estimated in March 1983 at \$225 million.

#### TRIBAL OPPOSITION TO FACILITY

The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation have unanimously adopted five resolutions since July 1979 opposing the Kootenai Falls facility, the last resolution being approved on December 3, 1982. They believe that the construction of the Kootenai Falls facility would forever alter, if not destroy, the role of the Falls in the Tribes' spiritual beliefs. The December 1982 resolution demanded that Interior direct BIA to immediately stop funding the proposed Kootenai Falls facility and to withdraw from further participation. In addition, the Confederated Salish and Kootenai Tribes, the Lower Kootenai Band of Canada, and the Kootenai Tribe of Idaho testified, during FERC hearings in 1983, in opposition to the proposed project. The Tribes testified that the Kootenai Falls facility, if constructed, would infringe upon their religious beliefs.

#### STATUS OF CONSTRUCTION LICENSE

On November 30, 1978, Northern Lights, Inc., acting as principal agent for the developers, applied to FERC for a hydroelectric facility construction and operation license pursuant to section 23(b) of the Federal Power Act (16 U.S.C. 817). Public notice of the Kootenai Falls facility application was made on April 13, 1979. FERC is responsible for determining whether a license should be issued for construction and operation of the proposed Kootenai Falls facility. FERC's proceedings were ongoing as of June 14, 1984.

On June 19, 1981, FERC issued an order providing for hearings in the application review proceeding. Under that order, a pre-hearing conference was held on September 9, 1981, with the first FERC hearing held on August 16, 1982, and the last on April 6, 1983. The hearings generated 68 volumes of transcript, totaling 9,641 pages, and included over 740 exhibits.

On July 30 and 31, 1983, FERC held public hearings in Libby, Montana. The hearings were held to allow the public to present its views regarding the Northern Lights, Inc., application for the proposed Kootenai Falls facility. Over 170 oral and written statements were presented.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

Senator Max Baucus asked us to determine whether (1) BIA had properly spent federal funds for the proposed Kootenai Falls facility and (2) Interior was meeting its responsibilities to the Tribes and to the electric cooperatives petitioning to develop the

Kootenai Falls facility to ensure a fair process for all parties involved in the controversy. In subsequent discussions with the Senator's office, it was agreed that we would limit our review to BIA's funding participation in the Kootenai Falls venture, specifically identifying (1) who authorized the reprogramming of funds for Kootenai Falls and (2) why the funds were reprogrammed. We did not try to determine the appropriateness of BIA's participation in the Kootenai Falls venture or what other options or alternatives may have been available to assure a future source of electricity for the Flathead Indian Reservation.

In August 1983, Interior's Office of Inspector General was developing a report on the results of its review of the operations and financial management of the Flathead project, including the project's participation in the proposed Kootenai Falls facility. The Inspector General's report was issued on February 24, 1984. To avoid duplication of work, we reviewed and used the Inspector General's Sacramento, California, office's workpapers and selectively verified the work when we visited the Flathead project.

We also reviewed Interior's fiscal years 1977 through 1984 appropriations acts and budget justifications to identify funding authorizations for the proposed Kootenai Falls facility, pertinent funding restrictions, and other congressional requirements. We also identified the following legal issues to be addressed:

- Was there a dollar limitation on the funds that BIA could obligate and expend on the feasibility study and license application costs for the proposed Kootenai Falls facility?
- Could revenues from BIA Indian irrigation and power projects be used to fund the feasibility study and license application costs for the proposed Kootenai Falls facility?
- Did BIA have authority to reprogram funds provided for Flathead power and irrigation construction to pay the feasibility study and license application costs for the proposed Kootenai Falls facility? Was congressional authorization needed to reprogram the funds?

We analyzed these legal issues by studying pertinent legislative and budgetary documents and examining information obtained as a result of our review, including Interior and BIA directives, decisions, and policies. Our opinions on the above legal issues are provided where appropriate in this report.

We obtained information regarding the proposed Kootenai Falls facility from pertinent financial and management records at the Flathead project. We interviewed BIA headquarters, Portland Area Office, and Flathead project officials in Washington, D.C.; Portland; and St. Ignatius, Montana, respectively. We interviewed a FERC staff attorney in Washington, D.C., involved with the Kootenai Falls hydroelectric facility license review process. We

also interviewed Interior's Inspector General staff in Sacramento, California. We examined BIA and Interior policies, procedures, and practices regarding project funding processes. Our discussions with BIA officials focused on Interior's authorization criteria for approving the expenditure and reprogramming of federal funds.

We made our review between August and October 1983 in accordance with generally accepted government auditing standards and obtained supplemental information through June 1984.

## CHAPTER 2

### FINANCIAL PROBLEMS AND TRIBAL OPPOSITION

#### MAKE BIA'S CONTINUED PARTICIPATION UNCERTAIN

Of the total \$493,000 that BIA had spent through February 1984 on Kootenai Falls feasibility study and license application costs, \$85,000 had been requested specifically from the Congress for these costs, \$265,000 had been reprogrammed from other BIA funds, and \$143,000 had been obtained from Flathead Indian Reservation Irrigation and Power Project revenues. We found procedural and legal problems, respectively, with reprogrammed funds and funds obtained from Flathead project revenues. Also, tribal opposition to the proposed Kootenai Falls facility and to BIA's involvement in it has made BIA's continued participation in the venture uncertain.

BIA did not comply with BIA and House and Senate directives after it reprogrammed \$265,000 to pay part of its share of the Kootenai Falls feasibility study and license application costs. These directives require that such reprogramming of funds be reported to the congressional appropriations committees. BIA's Flathead project engineer said that he was not aware that reprogrammed funds should have been reported to the congressional appropriations committees.

Federal laws relating to the Flathead project do not clearly authorize the use of power revenues for expenses such as those related to the Kootenai Falls project. The use of such revenues is contrary to a longstanding appropriations rule that prohibits an agency from switching from one appropriation to another to pay project expenses. BIA's Flathead project engineer said that to make sure the reservation would eventually receive its 10.5-percent share of electrical power from the proposed Kootenai Falls facility, he authorized the use of power revenues to pay for feasibility study and license application costs after other appropriated and reprogrammed funds were spent.

Tribal opposition to both the construction of the proposed facility and BIA's participation in the venture has resulted in the suspension of BIA participation payments by the Portland Area Office director. Tribal opposition to the proposed location of the facility was also an issue considered by the FERC staff which recommended to FERC's administrative law judge hearing the case that a federal construction and operation license for the proposed facility not be issued.

#### REPROGRAMMED FUNDS NOT REPORTED TO COMMITTEES

Between October 1979 and November 1981, BIA's acting assistant director for financial management approved three reprogramming requests of the Flathead project and Billings Area Office totaling

\$265,000 for Kootenai Falls expenses. The \$265,000 came from other appropriated BIA irrigation and power construction funds.<sup>3</sup>

While there were no general legal restrictions prohibiting BIA from reprogramming these appropriated funds,<sup>4</sup> the House and Senate reports<sup>5</sup> on Interior's fiscal year 1979 appropriations act (Public Law 95-465, Oct. 17, 1978), whose legislative history included the only reference to funds--\$85,000--specifically requested by BIA for the proposed Kootenai Falls facility, clearly indicated that the Congress wanted to be informed of reprogrammed funds. The House and Senate reports set forth detailed instructions for congressional approval of reprogrammings. The reports directed, among other things, that all reprogrammings should be reported to the appropriations committees quarterly and should include cumulative totals.<sup>6</sup>

BIA's fiscal year 1979 through 1983 funds management operating instructions addressed to central office directors, area directors, and program officials, with guidelines and information relating to the funding and operation of BIA programs, stated that reports of all reprogramming actions were to be reported quarterly to congressional appropriations committees.

A 1975 Comptroller General decision states that federal agencies remain answerable to the Congress through the annual budget process and that when a federal agency deviates for some reason ". . . from what Congress had in mind in appropriating funds, the agency can be expected to so inform Congress through recognized and accepted practices."<sup>7</sup>

Our review of Interior's quarterly reprogramming reports, available only for fiscal years 1981 through 1983, and discussions with BIA's Flathead project engineer and BIA's program and budget officer showed that BIA did not report to the appropriations committees on its reprogrammings of \$265,000. Therefore, BIA did not comply with congressional directives and its own reporting requirements.

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<sup>3</sup>BIA irrigation construction account funds are used to provide for the construction, extension, and rehabilitation of irrigation projects and related power systems on Indian reservations.

<sup>4</sup>55 Comp. Gen. 307, 319 (1975).

<sup>5</sup>H. Rept. 95-1251, 95th Cong., 2nd Sess. 120-121 (1978) and S. Rept. 95-1063, 95th Cong., 2nd Sess. 6-7 (1978).

<sup>6</sup>These reprogramming procedures were restated, with minor revisions, in H. Rept. 97-942, 97th Cong., 2nd Sess. 8-9 (1982).

<sup>7</sup>55 Comp. Gen. 307, 318 (1975).

BIA's headquarters budget officer said that the Flathead transfers of appropriated irrigation and power construction funds for the payment of Kootenai Falls facility expenses may not have been recognized as reprogramming actions by the budget office staff that processed the 1979, 1980, and 1981 authorizations and were, therefore, not reported to the congressional appropriations committees. The budget officer said this could not be verified, however, because the reprogramming actions took place up to 5 years ago and there have been many budget office staff changes during that period. Our review of the three reprogramming actions showed that the requests were somewhat vague and, therefore, may not have been properly identified.

INAPPROPRIATE USE OF FLATHEAD INDIAN  
RESERVATION POWER SYSTEM REVENUES

The Flathead project continued to receive bills for Kootenai Falls feasibility study and license application costs from the developers after \$265,000 of reprogrammed irrigation and power construction funds and \$85,000 from fiscal year 1979 appropriated funds were spent. In September 1982, therefore, BIA's Flathead project engineer authorized payments from the Flathead project's power system revenues. Through October 1983, the Flathead project had recorded payments for the Kootenai Falls venture of about \$143,000 from power system revenues. The use of power revenues for this purpose is not clearly authorized by law. Also, use of the revenues was contrary to federal appropriations rules.

BIA's Flathead project engineer said that he had authorized the use of the power revenues to secure the project's 10.5-percent share of electrical power from the Kootenai Falls facility. He said that he was aware that using the power revenues for this purpose was questionable but that it became necessary without another source of funds.

Use of power revenues is not clearly authorized

In 1946, the Congress authorized the appropriations of collected revenues from the sale of electric power to BIA power system users for operation and maintenance purposes of their respective projects.

The use of revenues collected by a BIA power system is restricted by 25 U.S.C. 385c (60 Stat. 895) which states that power revenues are authorized to be appropriated annually, in connection with the respective project from which they are derived, for

--payment of the expenses of operating and maintaining the power system;

--creation and maintenance of reserve funds to be available for making repairs and replacement to, defraying emergency expenses for, and insuring continuous operation of the power system;

- amortization, in accordance with the repayment provisions of the applicable statutes or contracts, of construction costs allocated to be returned from power revenues; and
- payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law.

The act of May 25, 1948 (62 Stat. 269, 273), as amended by section 112 of Public Law 97-100, December 23, 1981 (95 Stat. 1391, 1404), provides specific further uses of Flathead power revenues. The 1948 act, as amended, states that Flathead's power revenues shall be available for making improvements and extensions to power systems as the Secretary of the Interior may deem necessary to provide electric service to persons whose applications for such service could not otherwise be complied with in the due course of business.

It is questionable whether any of the permissible uses of power revenues listed in 25 U.S.C. 385c is broad enough to encompass expenditures for the proposed Kootenai Falls facility. The 1948 act permits the use of Flathead power revenues for "improvements and extensions to the power system." Although the proposed Kootenai Falls facility could perhaps be considered an "extension" of the Flathead project under section 385c on the basis that the facility will be necessary to ensure continuous operation of the Flathead power system, we believe it is questionable whether the phrase "improvements and extensions" can be interpreted so broadly.

The context of the 1948 act indicates that the improvements and extensions envisioned by the Congress involved incremental additions to the existing power system in order to extend service to identifiable applicants. The proposed Kootenai Falls facility, we believe, represents a new undertaking, a substantial distance (70 miles) from BIA's Flathead project service area, and the use of power revenues would exceed, therefore, the purposes intended by the Congress. Moreover, even if the 1948 act did cover construction of the proposed facility, it is not clear that it would extend to feasibility study and license application costs.

We also noted that a BIA field solicitor questioned the use of power revenues for the proposed facility. On August 17, 1977, BIA's Billings Area Office field solicitor, in response to a June 1977 discussion with the office's Director for Indian Affairs on BIA's possible participation in the proposed Kootenai Falls facility, advised the area director about the use of accumulated power revenues. The field solicitor noted that power revenues must be used in accordance with the 1948 act and "cannot be risked in what could be a speculative venture of applying for a power license."

Use of power revenues was contrary to appropriations rule

Even if the use of power revenues was not restricted by the statutes discussed above, BIA's use of power revenues, in

combination with other appropriated funds, was nonetheless improper. A longstanding rule of appropriations law is that when either of two appropriations may reasonably be construed as available for expenditures not specifically mentioned under either appropriation, the agency's determination as to which appropriation to use will not be questioned. However, once the agency has made a determination, the continued use of the appropriation selected, to the exclusion of any other for the same purpose, is required.<sup>8</sup>

BIA initially funded the Kootenai Falls feasibility study and license application costs with \$350,000 allotted or reprogrammed from BIA's fiscal years 1977, 1979, 1980, and 1982 irrigation and power construction appropriations. Subsequently, \$143,000 of Flathead power revenues were used to continue funding Kootenai Falls feasibility study and license application costs. This use of power revenues, after BIA had already elected to spend funds from its irrigation and power construction appropriations, was contrary to the principle outlined above. BIA should reimburse the Flathead project power revenues from an available appropriation account or seek a deficiency appropriation from the Congress for that purpose. (See Comp. Gen. B-95136, Aug. 8, 1979.)

A FERC staff attorney, familiar with FERC's Kootenai Falls hydroelectric facility construction license approval process, estimated in November 1983 that the Kootenai Falls construction and operation license application may be tied up in litigation for 2 or more years before a final decision is reached. If expenditures continue for another 2 years at the Flathead project's 1983 power revenue expenditure rate for Kootenai Falls of about \$12,000 per month, a total of about \$431,000 in Flathead power revenues may be improperly spent by the Flathead project to cover its 10.5-percent share of the Kootenai Falls feasibility study and license application costs.<sup>9</sup>

BIA's Flathead project engineer acknowledged that he had approved the use of power revenues for Kootenai Falls after other funds had been expended. He said that he believed that unless the hydroelectric facility was constructed, the Flathead Indian Reservation's electrical power system would be adversely affected by higher rates and the prospect of an inadequate supply of electricity by the 1990's. The Flathead project engineer said that in response to these concerns, he had approved the use of Flathead project power revenues to secure BIA's interest in the Kootenai Falls venture.

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<sup>8</sup>23 Comp. Gen. 827, 828 (1944); 59 Comp. Gen. 518, 520-21 (1980).

<sup>9</sup>The Portland Area Office director in October 1983 suspended BIA's 4th quarter 1983 and further Kootenai Falls participation payments until Interior's Solicitor determines whether BIA participation in the venture is appropriate.

## CONTINUED BIA PARTICIPATION IS UNCERTAIN

BIA's continued participation in the Kootenai Falls venture seems uncertain not only because of the Flathead project's financial problems, but also as a result of tribal opposition to construction of the facility at Kootenai Falls and BIA's participation in the venture, as discussed on page 3.

BIA's Flathead project engineer told us in September 1983 that although the tribes opposed the proposed facility, he believed BIA would continue to participate in the Kootenai Falls venture. He said he believed that the completion of the hydroelectric facility would be in the best interest of the Flathead Indian Reservation's electric customers who would need the additional electric power in the 1990's.

In February 1984, however, the Portland Area Office acting director told us that as a result of the tribes' continuing opposition to both the proposed Kootenai Falls hydroelectric facility and BIA's participation in the venture, the Portland Area Office director had (1) requested in October 1983 that Interior's Solicitor determine whether BIA participation in the Kootenai Falls venture is appropriate and (2) directed that BIA's share of Kootenai Falls participation payments be suspended until the Solicitor's determination is provided.

On August 30, 1983, FERC staff recommended to FERC's administrative law judge reviewing the Kootenai Falls facility construction license application, as discussed on page 3, that the license be denied. The recommendation was the result of the staff's examination of the legal and factual issues regarding the design and location of the proposed facility. These issues included, among others, (1) whether the power from the proposed facility is needed to meet the future electrical power requirements of the applicants and the Pacific Northwest, (2) whether the proposed facility is economically feasible, (3) whether the construction and operation of the proposed facility will adversely affect the visual, recreational, and wildlife resources of the impacted area, (4) the effect of the proposed facility on the fisheries of the Kootenai River, (5) whether the proposed facility will infringe on the Kootenai Tribes' religious beliefs, and (6) whether archeological and cultural resources will be adversely affected. The staff concluded that "the preservation of the Kootenai Falls area far out-weighs the need for the project."

On April 23, 1984, the FERC administrative law judge recommended to the Commission that the license for the proposed Kootenai Falls facility be denied. According to the FERC staff attorney, the applicants will appeal the judge's ruling to the full Commission, but the Commission's decision may not come for at least a year.

## CONCLUSIONS

BIA has not adequately disclosed to the Congress the extent of its participation and the cumulative amount of BIA funding for the proposed Kootenai Falls facility. Without such disclosure, the Congress does not have adequate information to determine if continued Kootenai Falls participation by BIA is warranted.

BIA did not report the reprogrammings of \$265,000 for the proposed Kootenai Falls facility to congressional appropriations committees, contrary to BIA and congressional directives. To comply with such directives, BIA should now report all of its Kootenai Falls reprogrammings of funds to the congressional appropriations committees.

BIA's Flathead project engineer used power revenues to maintain BIA's 10.5-percent interest in the proposed Kootenai Falls hydroelectric facility in order to meet the anticipated future demands of the Flathead Indian Reservation's electrical power system. In our opinion, the use of Flathead project power revenues to pay BIA's share of the Kootenai Falls feasibility study and license application costs was improper. Accordingly, BIA should prohibit the use of Flathead project power system revenues to fund continuing Kootenai Falls feasibility study and license application costs. BIA should also reimburse the Flathead project power revenues from an available appropriation or seek a deficiency appropriation from the Congress for that purpose.

As a result of the Flathead project's financial problems, as well as, among other things, tribal opposition to both construction of the proposed facility at Kootenai Falls and BIA participation in the venture, BIA's participation payments have been suspended. Also, the FERC staff and the FERC administrative law judge have recommended that the issuance of a federal construction and operation license for the proposed Kootenai Falls facility be denied. These actions, as well as the requested Solicitor's determination on the appropriateness of BIA's participation in the Kootenai Falls venture, have made BIA's continued participation in the proposed facility uncertain. If participation is continued, however, BIA should develop proposals for funding such participation and present them to the Congress for its approval.

## RECOMMENDATIONS

We recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to:

- Report to congressional appropriations committees all reprogramming actions and the total funds made available for funding BIA's share of Kootenai Falls feasibility study and license application costs.

--Terminate the use of Flathead power system revenues for Kootenai Falls feasibility study and license application costs.

--Reimburse the Flathead project power revenues from an available appropriation account or seek a deficiency appropriation from the Congress for that purpose.

We also recommend that if Interior's Solicitor determines that it is in the government's and the Flathead Indian Reservation's best interests for BIA to continue its participation in the Kootenai Falls venture, the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to develop and present to the Congress funding proposals for continued BIA participation.

#### AGENCY COMMENTS

Interior agreed to report all BIA transactions involved in funding the proposed Kootenai Falls facility to the Congress. (See app. I.) Interior also agreed that the use of Flathead irrigation and power system revenues to fund Kootenai Falls facility expenses should be terminated and said that the Flathead project engineer had been directed to cease such funding.

Interior agreed to develop a Kootenai Falls funding budget for congressional approval if BIA and Interior's Solicitor determined that BIA's continued participation in the proposed facility has merit, will serve the interests of the Indian community, and is a justifiable and legal use of scarce resources. Also, BIA agreed to reimburse the funds improperly spent from Flathead project power revenues. (See app. II.)

## CHAPTER 3

### SOME INTERNAL CONTROLS DO NOT COMPLY WITH COMPTROLLER GENERAL'S STANDARDS

The Accounting and Auditing Act of 1950 (31 U.S.C. 3501 et seq.) requires, among other things, that agency heads establish and maintain effective systems of internal control. The Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 3512) requires renewed focus on the need to strengthen internal controls, in part, through executive agency compliance with the Comptroller General's internal control standards and related requirements. The Comptroller General's internal control standards pursuant to the 1950 act, the latest issued in 1983,<sup>10</sup> define the minimum level of quality acceptable for internal control systems and constitute the criteria against which systems are to be evaluated.

Interior's Inspector General found that the Flathead project, which is also accountable for BIA's Kootenai Falls participation funding, had several financial management problems, including failure to correct financial deficiencies identified in prior Inspector General reports and questionable project revenue investment and advance payment practices. We determined that as a result of two problems identified by the Inspector General, the Flathead project's financial system was not in compliance with the Comptroller General's internal control standards that require (1) adequately trained or experienced personnel and (2) separation of duties.

#### PERSONNEL NOT ADEQUATELY TRAINED OR EXPERIENCED

One of the Comptroller General's internal control standards requires managers and their staffs to maintain and demonstrate, among other things, a level of skill necessary to help ensure effective performance and an understanding of internal controls sufficient to effectively discharge their responsibilities. According to the Comptroller General, hiring and staffing decisions should include pertinent verification of education and experience and, once on the job, the individual should be given necessary formal and on-the-job training.

A 1983 review of the Flathead project's financial management system by Interior's Office of Inspector General showed that as the result of two retirements, one in November 1979 and one in June 1983, only two of four accounting technician positions were filled at the time of the review. In addition, the Inspector General found that the Flathead project's financial staff was not

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<sup>10</sup>Standards for Internal Controls in the Federal Government, U.S. General Accounting Office, 1983.

sufficiently trained or experienced in the overall financial management of an enterprise of Flathead's complexity and could not be expected to prepare its financial statements.

The Inspector General found, for example, that the Flathead project's operating statements contained only partial balance sheet information, no monthly presentation of revenues or profits and losses, and no comparison of actual expenditures to budgeted figures. Because of such findings, we concluded that the Flathead project's financial system was not in compliance with the Comptroller General's standard requiring adequately trained or experienced personnel.

In response to an Inspector General recommendation, BIA agreed in January 1984 that the Flathead project's finance office operations would be reviewed. In commenting on a draft of our report in April 1984, Interior agreed that additional actions were needed to bring the project's financial management system into conformance with the internal control standard on adequately experienced and trained personnel.

#### DUTIES NOT SEPARATED

To reduce the risk of error, waste, or wrongful acts or to reduce the risk of their going undetected, the Comptroller General's separation-of-duties standard requires that no one individual control all key aspects of a transaction or event. Rather, duties and responsibilities should be assigned systematically to a number of individuals to ensure that effective checks and balances exist.

BIA's Flathead project engineer had assumed, as did his predecessor, the duties of the administrative officer, including the certification of receipts and payments. From 1976 until November 1983, when an administrative officer was assigned to the Flathead project staff, the combined responsibilities of project engineer and administrative officer, which were carried out by the project engineer, did not comply with the Comptroller General's separation-of-duties standard.

When the present Flathead project engineer assumed his duties in September 1980 as a result of his predecessor's retirement, he also assumed, as did his predecessor, the duties of the vacant administrative officer position. The administrative officer is responsible for reviewing, approving, and certifying all Flathead project financial transactions, including those relating to the proposed Kootenai Falls facility. The project engineer is responsible for authorizing project expenditures.

BIA's Flathead project engineer said that his predecessor had asked BIA to assign an administrative officer to the project staff when the position became vacant in 1976. Subsequently, after a lengthy placement period, an administrative officer was assigned. However, the new administrative officer, according to the present project engineer, found the complexity of the position too difficult and left the project after only 1 month. As a result of

this experience, the former project engineer did not request a replacement but, instead, assumed the administrative officer's duties himself. The situation remained unchanged until mid-1983 when we and Interior's Inspector General informed the present project engineer that his combined duties and responsibilities did not comply with the Comptroller General's separation-of-duties standard. Subsequently, the project engineer asked BIA to assign an administrative officer to his staff. BIA assigned one in late November 1983.

BIA's Flathead project engineer said that he was not aware that his assumption of the administrative officer's duties was not in compliance with the Comptroller General's standards. He added that he was not comfortable managing the administrative officer's affairs because he had not been trained for the position.

### CONCLUSIONS

The Inspector General identified several financial management and accounting problems at the Flathead project. From our review, we determined that the Flathead project was not in compliance with the Comptroller General's internal control standard that requires financial staff to be sufficiently trained or experienced. In addition, we determined that the assumption of administrative officer duties and responsibilities by successive Flathead project engineers resulted in one person having both managerial and financial control of the Flathead project and the related Kootenai Falls participation activities, contrary to the Comptroller General's separation-of-duties standard.

BIA's assignment of an administrative officer to the Flathead project should correct the separation-of-duties problem. However, BIA also needs to ensure that the project's financial management system complies with the Comptroller General's internal control standard requiring adequately trained and experienced personnel.

### RECOMMENDATION

We recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to ensure that the financial management system at the Flathead Indian Reservation Irrigation and Power Project complies with the Comptroller General's internal control standard requiring adequately trained and experienced personnel.

### AGENCY COMMENTS

Interior agreed with our recommendation and said that it had started corrective actions to bring the Flathead project into compliance with the Comptroller General's internal control standards. (See app. I.) Interior said that a new administrative officer had been hired, a new supervisory accounting position would be established and filled, the existing accounting positions would be evaluated and perhaps upgraded, and staff training was planned.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

APR 18 1984

Mr. J. Dexter Peach  
Director, Resources, Community  
and Economic Development Division  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Peach:

We appreciate being given opportunity to comment on GAO's draft report Bureau of Indian Affairs' Participation in Proposed Hydroelectric Facility at Kootenai Falls, Montana (GAO/RCED-84-126). The report points out various deficiencies in the management of the program, to which our attention is now focused. Using this audit, along with the audit just prepared by the Interior Inspector General, we can assure that the Flathead project will be brought into compliance with all applicable laws and regulations. Please note in the enclosure to this letter that we have already initiated some corrective actions in regard to your recommendations. As stated in the enclosure, other corrective actions will be taken in the near future.

Sincerely,

Assistant Secretary for  
Indian Affairs

Enclosure

Bureau of Indian Affairs' Participation  
in Proposed Hydroelectric Facility at  
Kootenai Falls, Montana  
(GAO/RCED-84-126)

RECOMMENDATION:

GAO recommends that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to report to the congressional appropriations committees all BIA reprogramming actions related to the Kootenai Falls venture.

RESPONSE:

We agree that any improper reprogramming of funds for the purpose of funding the Kootenai Falls feasibility study should be reported to the Congress. Accordingly, a report of all transactions involved in the funding of the Kootenai Falls Hydro Electric project is being prepared at the present time by the Portland Area Office (BIA) and will be submitted to the Assistant Secretary Indian Affairs for transmittal to the Congress.

RECOMMENDATION:

GAO recommends that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to terminate the use of Flathead irrigation and power systems revenues for the proposed Kootenai Falls facility.

RESPONSE:

We agree. The Flathead Project Engineer has been directed to cease funding the Kootenai Falls Hydro Electric Project from the irrigation and power system revenues.

RECOMMENDATION:

GAO recommends that if Interior's Solicitor determines that it is in the government's and the Flathead Indian Reservation's best interest for BIA to continue its participation in the Kootenai Falls venture, the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to develop and present to the Congress funding proposals for continuing such participation.

RESPONSE:

We agree. The propriety of funding the Kootenai Falls Hydro Electric Project is being examined by the Bureau and by the Solicitor's Office. If it is determined that the Project feasibility study has merit, will serve the interest of the Indian community, and is a justifiable and legal use of scarce resources, a budget will be developed by the Bureau and submitted to the Congress for approval.

RECOMMENDATION:

GAO recommends that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to ensure that the financial management system at the Flathead Indian Reservation Irrigation and Power Project is brought into compliance with the Comptroller General's internal control standard requiring adequately trained and experienced personnel.

RESPONSE:

We agree. In fact, the Bureau has already started corrective action to bring the Project into compliance with internal control standards. A new Administrative Officer has been hired; a new supervisory accounting position is to be established and filled; the existing accounting positions are to be evaluated and perhaps upgraded. Finally, training of the staff is being planned.



IN REPLY REFER TO  
Administration

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D C 20245

8 JUN 1984

Mr. J. Dexter Peach  
Director, Resources Community  
and Economic Development Division  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Peach:

We have reviewed your revised report entitled "Bureau of Indian Affairs' Participation in a Proposed Hydroelectric Facility at Kootenai Falls, Montana" wherein your organization has added one further recommendation; i.e.,

Recommendation

"Reimburse the Flathead project power revenues from an available appropriation account or seek a deficiency appropriation from Congress for that purpose."

Response

We agree. The Bureau will reimburse the Flathead Irrigation Project power account for expenditures on the Kootenai Falls feasibility study.

Sincerely,

*[Handwritten signature]*  
Deputy Assistant Secretary -  
Indian Affairs (Operations)

(145949)

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